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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/789,620

02/27/2004

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310558.00003

7666

26735 7590 03/04/2009

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/789,620	Applicant(s) ERIKSSON ET AL.	
	Examiner MICHAEL G. MENDOZA	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-13, 15-26 and 33 is/are rejected.
- 7) ☒ Claim(s) 4, 14, 34 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/16/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, and 15-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Mishra et al. US 2004/0175690 A1 (Mishra).
4. Mishra teaches an apparatus comprising: a housing presenting a handle having a gripping surface and a cutting head attached to the handle; a cutting assembly rotatably connected to the cutting head, the cutting assembly including a plurality of spaced part blade tips [0036]; a receptacle disposed downstream of the cutting assembly (Mishra teaches it is known to catch cut tissue [0040], lines 9-11); the cutting head presenting a beveled base laterally aligned with the cutting assembly (the two supports holding the blades are beveled); further comprising a second engagement surface; wherein the second engagement surface is a second handle (see fig. 5); wherein the handle can be actuated between a storage position and an engaged

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position (storage position being away from the skin and engaged position being in contact with the skin); wherein the blade tips are spaced apart a distance between 100 and 5000 microns [0036]; wherein the blade tips are formed in a corresponding plurality of rotatable blades [0036].

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 6-13, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishra in view of Atkinson et al. 5196020 (Atkinson).

7. Mishra teaches the apparatus of claims 1-3, 15, 16, and 18-22. It should be noted that Mishra fails to teach a tissue separator including a base and a plurality of tines.

8. Atkinson teaches a device with a common separator for removing skin from cutter blades of a graft preparation device (col. 1, lines 6-10). Therefore, it would have been obvious to one having ordinary skill in the art to modify the device of Mishra to include the tissue separator in view of Atkinson to remove graft material stuck to blades.

9. As to claim 11, Mishra/Atkinson teaches wherein the separator can be actuated between a stand-by position and an engaged position; the separator being hingeably attached to the housing (col. 2, lines 32-48); wherein the separator is slideably received

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by the housing (the separator can slide inbetween the portions holding the blades before being fastened thereto)

10. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishra in view of Tusing 4136746.

11. Mishra teaches the apparatus of claim 22. It should be noted that Mishra fails spacer member disposed between adjacent blades.

12. Tusing teaches an apparatus with common rotatable blades and spaces disposed between adjacent blades. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the spacers in view of Tusing between the blades of Mishra to maintain a proper spacing between the blades (col. 3, lines 26-28).

13. Mishra/Tusing teaches the apparatus of claim 23, further comprising an axle ([0036], lines 1-4).

14. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mishra in view of Atkinson and Rosenberg 4690139.

15. Mishra/Atkinson teaches the hand-held apparatus as set forth in the rejection of claims 4, 6, 7, 11-13, 25, and 25 above. It should be noted that Mishra/Atkinson fails to teach wherein the second handle is pivotally coupled to the cutting head.

16. Rosenberg teaches a hand-held apparatus with a common pivotally coupled handle. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a pivotable handle in view of Rosenberg to allow for improved mechanical leverage for controlling the blades (col. 3, lines 56-59).

Allowable Subject Matter

17. Claims 5, 14, 34 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/M. G. M./

Examiner, Art Unit 3734

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3734